

The Fight Against Discrimination in Practice

Overview of the Implementation of EC Anti- Discrimination Directives in the Member States

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Discrimination Law

IMPLEMENTATION:

- National law(s): are they compliant with the Directives?
- Institutions and procedures
- Access to justice - in practice?
- Sanctions
- Are national laws/procedures being used?
- If so, how effective are national laws, procedures and institutions in combating discrimination ?

DIFFERENT STARTING POINTS

- Written constitution with equality provisions
- Common law or civil law system
- Existing anti-discrimination legislation
- Existing judicial / administrative procedures
- Role of NGOs
- Structure of government: central or federal

DIFFERENT APPROACHES TO FORMAL TRANSPOSITION OF THE DIRECTIVES

- Anti-discrimination act based on Directives
- Wider anti-discrimination act
- Several single ground acts
- Anti-discrimination act plus labour and/or penal codes and/or administrative law
- Anti-discrimination provisions included in wider act
- Transposed only in employment law

GROUNDS PROTECTED UNDER NATIONAL LAWS

- laws in nearly all Member States cover all 6 grounds in the Directives
- All national laws include protection against sex discrimination
- Many national laws include additional grounds (closed list/open list)
- “on grounds of” or “on grounds of the person’s

MATERIAL SCOPE

- Most national laws cover the material scope of the Directives
- A few have not transposed the Race Directive beyond employment
- Some national laws provide different protections and different forms of enforcement in public sector and private sector.

DEFINITIONS IN NATIONAL LAWS

- Direct and indirect discrimination - most national laws reflect Directives
 - some permit justification of direct discrimination on all grounds
 - different tests for “particular disadvantage”
- Harassment – a few laws have more restrictive definition
- Instructions to discriminate – may be only in penal code

REASONABLE ACCOMMODATION FOR DISABLED PERSONS

- In national laws - labour code or special disability law- in most Member States
- No consistency re whether failure to provide reasonable accommodation is unlawful discrimination – and if so is it direct, indirect or distinct form of discrimination
- Some national laws specify criteria for “reasonableness” as in preamble to Directive

POSITIVE ACTION

- Some pre-existing positive action policies/measures:
 - to integrate disabled people into workplaces
 - to achieve greater social integration of Roma
- Positive action measures as permitted under the Directives are legal in most Member States
- Case law needed to clarify what is possible as positive action that will be consistent with principle of equal treatment

SPECIALISED EQUALITY BODY

- Specialised equality bodies operational now in all but 3 countries.
- In all but 3 countries these bodies, or other parallel bodies, cover all grounds in Directives plus sex, and most cover full material scope of Directives
- Powers and duties vary widely
- Issues about independence
- Resources, influence and effectiveness

DEFENCE OF RIGHTS

- Judicial proceedings in some form - civil, criminal, labour or administrative - available in all Member States
- Some national laws permit organisations to represent or support victims - fewer allow organisations to act on behalf of victims
- Different criteria to determine which organisations can support victims
- 'class actions' possible in few countries

PROTECTION AGAINST VICTIMISATION

- In many Member States limited to employment cases
- In many Member States protection only for complainants while Directives require protection for "individuals"/"employees"
- Most national laws fail to provide proactive protection

SHIFT OF THE BURDEN OF PROOF

- Not fully transposed in several Member States
- In others, limited to certain types of cases
- In others, waiting for case law to know how the provisions in national law will be applied
- Different approaches re whether shift of the burden of proof should apply to procedures of specialised bodies

SANCTIONS - EFFECTIVE, PROPORTIONATE AND DISSUASIVE

- Few, if any, Member States are achieving this
- Dependent on type of law, form of enforcement
- Remedial, compensatory, punitive, preventive
- Some innovative provisions in national laws
- Possibly too early to assess whether legislation should prescribe more effective sanctions or whether courts and

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**CONTINUING RESPONSIBILITIES
OF THE MEMBER STATE**

- Few Member States are complying with duty to disseminate information
- Few Member States have structures for regular dialogue with NGOs, civil society
- Laws, policies consistent with principle of equal treatment?
- Leadership